

# EXHIBIT 7

Tennessee Clinic Defendants' Supplemental  
Privilege Log for CMC Documents

## DISTRICT OF MASSACHUSETTS

IN RE NEW ENGLAND COMPOUNDING	)	
PHARMACY, INC. PRODUCTS LIABILITY	)	
LITIGATION	)	
_____	)	MDL No. 2419
	)	Dkt. No 1:13-md-2419 (RWZ)
THIS DOCUMENT RELATES TO:	)	
	)	
Suits Naming Specialty Surgery Center, PLLC	)	
_____	)	

**TENNESSEE CLINIC DEFENDANTS' SUPPLEMENTAL PRIVILEGE LOG FOR  
ATTORNEY-CLIENT COMMUNICATIONS PRODUCED BY  
CUMBERLAND MEDICAL CENTER**

Defendants Specialty Surgery Center, Crossville, PLLC ("SSC"), Kenneth R. Lister, MD ("Dr. Lister"), Kenneth Lister, MD, PC ("Dr. Lister's Practice"), Jean Atkinson, RN, Saint Thomas Outpatient Neurosurgical Center, LLC, Howell Allen Clinic, a Professional Corporation, and Donald Jones, MD (collectively, "Tennessee Clinic Defendants") submit the following privilege log for the documents produced by Cumberland Medical Center and reviewed for privilege prior to production to the PSC.

**Introduction to Supplemental Privilege Log**

This log supplements the Defendants' privilege log served November 23, 2016. This supplemental log provides additional information regarding the attorney-client communications withheld. Since the PSC has not taken issue with the information provided for the non-attorney-client privileged materials (HIPAA, Quality Improvement/Peer Review Privilege, and sensitive and irrelevant financial information), no supplemental information is provided for those materials. None of the withheld emails contain any specific reference to SSC's formulary, or updating/changing any policies or procedures.

### **Duplicates**

The withheld attorney-client communications include a substantial number of duplicates. Many came about when the person responded to an email, which caused the original email to appear at the bottom each time someone responded. Additionally, there are a number of true duplicates. The reason this occurred is not known.<sup>1</sup> Counsel for the Defendants tried to list each privileged email only once. There may be instances where a duplicate email was inadvertently listed more than once. In any event, all the attorney-client communications should be listed at least one time.

### **Global Explanation of Privilege**

State Volunteer Mutual Insurance Company (“SVMIC”) retained Gideon, Cooper & Essary (“GCE”) to represent SSC, Dr. Lister, Ms. Atkinson, STOPNC, Howell Allen, and Dr. Jones in late September and early October 2012 in matters related to the fungal meningitis outbreak, including:

- Investigating the cause of the outbreak and injuries to patients and providing legal assistance related to these functions, such as monitoring and reporting on the status of the government’s investigation of the outbreak and other similar activities.
- Providing legal assistance related to the response to the outbreak, such as notifying patients, restarting pain management procedures, responding to media inquiries, and other similar activities.
- Preparing for and defending litigation associated with the outbreak and providing legal assistance related to these functions, including responding to medical records requests from potential Plaintiffs, responding to subpoenas and requests for information from various government agencies, and preparing for and defending the civil suits against GCE’s clients directly, such as developing comparative fault and standard of care defenses and retaining experts.

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<sup>1</sup> The true duplicates may occur when email accounts were automatically archived or backed up.

The withheld communications with counsel identified on the privilege log were created and exchanged in furtherance of obtaining or providing legal services consistent with this engagement.

A number of the withheld emails were either sent directly to or forwarded to SSC's management company, Calisher & Associates. The Defendants assert the joint defense/common interest privilege, in addition to attorney-client privilege and work product, with respect to these communications. At the time of the emails, Calisher & Associates either shared a common legal interest with the Defendants (as a future co-defendant of SSC and Dr. Lister), such that the joint defense/common interest privilege would apply<sup>2</sup>; or, Calisher & Associates was acting as SSC's agent for the limited purpose of communicating with SSC's counsel.<sup>3</sup> Either way, SSC's waiver of privilege cannot destroy the privilege absent waiver by the other Tennessee Clinic Defendants.<sup>4 5</sup>

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<sup>2</sup> See *Boyd v. Comdata*, 88 S.W.3d 203 (Tenn. Ct. App. 2002).

<sup>3</sup> See Restatement (Third) of the Law Governing Lawyers, § 75 cmt. a ("A communication subject to the privilege for co-clients may be made through a client's agents for communication and a lawyer's agents for communication and other agents.").

<sup>4</sup> *Anderson v. Clarksville Montgomery Cty. Sch. Bd. & Sch. Dist.*, 229 F.R.D. 546 (M.D. Tenn. 2005) (holding that one client's waiver of attorney-client privilege does not waive privilege for co-clients); *John Morell & Company v. Local Union 304A of the United Food and Commercial Workers, AFL-CIO*, 913 F.2d 544, 556 (8th Cir. 1990) ("It is fundamental that the joint defense privilege cannot be waived without the consent of all parties to the defense.").

<sup>5</sup> This would create a joint defense with all of the Tennessee Clinic Defendants, such that all would have to waive the joint defense privilege for there to be a waiver.

### **Abbreviations on Privilege Log**

The following abbreviations apply to the privilege log below:

Gideon Cooper & Essary – “GCE”

Peter Strianse – “Strianse” – STOPNC, SSC, and Jones’ Attorney

Jim Howell – “Howell” – SVMIC<sup>6</sup> Attorney

Jim Trimbach – “Trimbach” – SVMIC Attorney

Ken Rucker – “Rucker” – SVMIC Attorney

Jeff Woods – “Woods” – SVMIC Attorney

Jean Atkinson – “Atkinson” – SSC Employee

Kim Bowlin – “Bowlin” – SSC Administrator

Diane Austin – “Austin” – SSC Employee

Kenneth Lister – “Lister” – SSC Executive Committee Member and Defendant

Donathan Ivey – “Ivey” – SSC Executive Committee Member

Jon Simpson – “Simpson” – SSC Executive Committee Member

Mark Fox – “Fox” – SSC Executive Committee Member

Mark Lee – “Lee” – SSC Executive Committee Member

Robert Nichols – “Nichols” – SSC Executive Committee Member

Susan Pick – “Pick” – SSC Executive Committee Member

Brandon Kowarsky – “Kowarsky” – Calisher & Associates<sup>7</sup> Employee

Gina Calisher – “G. Calisher” – Calisher & Associates Employee

Ron Calisher – “R. Calisher” – Calisher & Associates Employee

Kevin Calisher – “K. Calisher” – Calisher & Associates Employee

Greg Lanford – “Lanford” – Board Member of STOPNC<sup>8</sup> and Howell Allen

Scott Butler – “Butler” – Board Member of STOPNC and Howell Allen CAO

John Culclasure – “Culclasure” – Howell Allen/STOPNC Physician and Defendant

Debra Schamberg – “Schamberg” – Howell Allen/STOPNC Nurse and Defendant

Dale Batchelor - “Batchelor” – STOPNC Board Member from Saint Thomas<sup>9</sup>

Craig Polkow - “Polkow” – STOPNC Board Member from Saint Thomas

Dawn Rudolph – “Rudolph” – STOPNC Board Member from Saint Thomas

Berry Holt - “Holt” – Saint Thomas Attorney

Donald Jones – “Jones” – Defendant

Joy Day – “Day” – Dr. Jones’ Office Manager

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<sup>6</sup> State Volunteer Mutual Insurance Company.

<sup>7</sup> SSC’s management company.

<sup>8</sup> Saint Thomas Outpatient Neurosurgical Center, LLC.

<sup>9</sup> Saint Thomas Network owns half of STOPNC. Howell Allen owns the other half.

<b><u>Bates No.</u></b>	<b><u>Date</u></b>	<b><u>Sender</u></b>	<b><u>Recipient(s)</u></b>	<b><u>Privilege(s)</u></b>	<b><u>Subject-Matter</u></b>
139351 139354 140404 140406 145647 145650 146203	2/28/13	Atkinson	GCE, Bowlin	Attorney-Client Privilege; Work Product	Email from Atkinson seeking advice or input from counsel on restarting injections in patients who received contaminated MPA after Atkinson exchanged emails with Dr. Kainer at TN DoH about restarting injections.
139351	2/28/13	GCE	Atkinson	Attorney-Client Privilege; Work Product	Email from counsel requesting information on health status of future Plaintiff, Donald McDavid
139351	2/28/13	Atkinson	GCE	Attorney-Client Privilege; Work Product	Email from Atkinson to counsel responding to inquiry about health status of future Plaintiff, Donald McDavid
139361-62 140866-67 140878-79 140883 140897-98 142481-82 145520-21	1/9/13 1/10/13 <sup>10</sup>	GCE	Butler, Lanford, Batchelor, Polkow, Jones, Bowlin, Lister, Holt, Howell, Trimbach, Rucker, Woods	Attorney-Client Privilege; Work Product	Email from counsel reporting on TN BoP proceedings against Barry Cadden/NECC and request for information from GCE clients by TN BoP in relation to proceedings against Barry Cadden/NECC, including plan of action.

<sup>10</sup> There are multiple copies of this email in the production. One is dated 1/10/13, and the rest are dated 1/9/13. They are identical in substance and senders/recipients. The only difference is the date.

139359-60 140876-77 140881-82 140896-97 142481 142484-93 142494-98 142499-506 145518-19	1/10/13	GCE	Butler, Lanford, Batchelor, Polkow, Jones, Bowlin, Lister, Holt, Schamberg, Atkinson, Howell, Trimbach, Rucker, Woods	Attorney- Client Privilege; Work Product	Follow-up email from counsel regarding request for information from GCE clients by TN BoP in relation to proceedings against Barry Cadden/NECC, including plan of action and attaching draft affidavits.
140876 140881 145518	1/11/13	GCE	Atkinson, Bowlin	Attorney- Client Privilege; Work Product	Further follow up email from counsel regarding request for information from GCE clients by TN BoP in relation to proceedings against Barry Cadden/NECC.
140872	1/10/13	Bowlin	Atkinson	Attorney- Client Privilege; Work Product	Email from Bowlin forwarding to Atkinson email from counsel regarding request for information from GCE clients by TN BoP in relation to proceedings against Barry Cadden/NECC.
104872	1/11/13	Atkinson	GCE, Bowlin	Attorney- Client Privilege; Work Product	Email from Atkinson responding to email from counsel regarding request for information from GCE clients by TN BoP in relation to proceedings against Barry Cadden/NECC forwarded to Atkinson by Bowlin.
140880 <sup>11</sup>	1/11/13	Bowlin	GCE	Attorney- Client Privilege; Work Product	Email from Bowlin updating counsel on status of Atkinson executing affidavit in response to request for information from TN BoP.
140880	1/11/13	GCE	Bowlin	Attorney- Client Privilege; Work Product	Counsel's response to email from Bowlin updating counsel on status of Atkinson executing affidavit in response to request for information from TN BoP.

<sup>11</sup> An unredacted version of this communication was produced at Bates number 145518.

139358-59 140895	1/11/13 1/12/13 <sup>12</sup>	GCE	Butler, Lanford, Batchelor, Polkow, Jones, Bowlin, Lister, Holt, Schamberg, Atkinson, Howell, Trimbach, Rucker, Woods	Attorney- Client Privilege; Work Product	Email from counsel regarding request for information from GCE clients by TN BoP in relation to proceedings against Barry Cadden/NECC.
139358	1/14/13	Atkinson	GCE	Attorney- Client Privilege; Work Product	Atkinson's response to email from counsel regarding request for information from GCE clients by TN BoP in relation to proceedings against Barry Cadden/NECC.
145436	12/10/12	GCE	Atkinson, Bowlin	Attorney- Client Privilege; Work Product	Email from counsel requesting information regarding NECC medications in preparation for potential future litigation. This email does not reference the formulary in any way.
139375 140370	12/12/12	GCE	Atkinson, Bowlin	Attorney- Client Privilege; Work Product	Email from counsel requesting information regarding NECC medications in preparation for potential future litigation. This email does not reference the formulary in any way.
139375	12/12/12	Atkinson	GCE	Attorney- Client Privilege; Work Product	Atkinson's response to email from counsel requesting information regarding NECC medications in preparation for potential future litigation. This email does not reference the formulary in any way.

<sup>12</sup> There are multiple copies of this email in the production. One is dated 1/11/13, and the other is dated 1/12/13. They are identical in substance and senders/recipients. The only difference is the date.



139379 140345	12/12/12	GCE	Atkinson, Bowlin	Attorney- Client Privilege; Work Product	Email from counsel requesting information regarding NECC medications in preparation for potential future litigation. This email does not reference the formulary in any way.
139379	12/12/12	Atkinson	GCE	Attorney- Client Privilege; Work Product	Atkinson's response to email from counsel requesting information regarding NECC medications in preparation for potential future litigation. This email does not reference the formulary in any way.
139410 140456	3/6/13	GCE	Atkinson, Bowlin	Attorney- Client Privilege; Work Product	Email from counsel requesting documents in order to respond to request for information from federal prosecutor investigating NECC and Barry Cadden.
139410	3/7/13	Atkinson	GCE	Attorney- Client Privilege; Work Product	Atkinson's response to email from counsel requesting documents in order to respond to request for information from federal prosecutor investigating NECC and Barry Cadden.
139413	2/28/13	Atkinson	GCE	Attorney- Client Privilege; Work Product	Email from Atkinson requesting assistance of counsel in obtaining information from Cookeville Regional Medical Center regarding health status of future Plaintiff, Donald McDavid
139497 140435 141183 141516 147041	3/11/13	Atkinson	GCE, Bowlin	Attorney- Client Privilege; Work Product	Email from Atkinson requesting assistance from counsel in notifying patients regarding potential for local infection.
140434	3/11/13	GCE	Atkinson, Bowlin	Attorney- Client Privilege; Work Product	Counsel's response to email from Atkinson requesting assistance from counsel in notifying patients regarding potential for local infection.

140719	10/30/12	GCE	Atkinson, Bowlin	Attorney- Client Privilege; Work Product	Email from counsel with advice on obtaining additional information from medication suppliers prior to purchasing.
139565	11/2/12	Atkinson	GCE	Attorney- Client Privilege; Work Product	Email from Atkinson to counsel regarding information received from Besse Medical after counsel advised obtaining additional information prior to purchasing.
140142-43	10/8/12	GCE	Howell, Trimbach, Woods, Rucker, Jones, Lister, Lanford, Butler, Day, Bowlin, Batchelor, Polkow, Holt	Attorney- Client Privilege; Work Product	Email from counsel reporting on update from TN DoH regarding status of outbreak investigation, number of confirmed cases, advice for patient notification, etc.
140147-48 140543-44 145155-56 145190 146168-69	10/5/12	GCE	Jones, Lister, Lanford, Butler, Day, Bowlin, Howell, Trimbach, Rucker, Woods	Attorney- Client Privilege; Work Product	Email from counsel reporting on updated guidance from TN DoH and CDC regarding patient notification, and plan of action going forward.
145155	10/5/12	Bowlin	Atkinson, Ivey, Simpson, Lister, Fox, Lee, Nichols, Pick, Kowarsky, K. Calisher, R. Calisher, G. Calisher	Attorney- Client Privilege; Work Product; Joint Defense / Common interest	Email from Bowlin (with no text) forwarding email from counsel reporting on updated guidance from TN DoH and CDC regarding patient notification, and plan of action going forward.

140153-54 140158-59 141102-03 141104-06 145195 145197-98 146175-76	10/9/12	GCE	Howell, Trimbach, Woods, Rucker, Jones, Lister, Lanford, Butler, Day, Bowlín, Batchelor, Polkow, Holt	Attorney- Client Privilege; Work Product	Email from counsel reporting on update from TN DoH regarding status of outbreak investigation, incubation period for fungus, number of confirmed cases, advice for patient notification, <i>etc.</i> , and attaching press statement from TN DoH dated 10/9/12.
140153 140158 145195 145197	10/9/12	Holt	Howell, Trimbach, Woods, Rucker, Jones, Lister, Lanford, Butler, Day, Bowlín, Batchelor, Polkow, GCE	Attorney- Client Privilege; Work Product	Holt response to email from counsel reporting on update from TN DoH regarding status of outbreak investigation, incubation period for fungus, number of confirmed cases, advice for patient notification, <i>etc.</i>
140153 145197	10/10/12	GCE	Howell, Trimbach, Woods, Rucker, Jones, Lister, Lanford, Butler, Day, Bowlín, Batchelor, Polkow, Holt	Attorney- Client Privilege; Work Product	Counsel reply to Holt response to email from counsel reporting on update from TN DoH regarding status of outbreak investigation, incubation period for fungus, number of confirmed cases, advice for patient notification, <i>etc.</i>

146175 146177-79	10/10/12	Bowlin	Atkinson	Attorney-Client Privilege; Work Product	Email from Bowlin (with no text) forwarding original email from counsel (to which Holt was responding) reporting on update from TN DoH regarding status of outbreak investigation, incubation period for fungus, number of confirmed cases, advice for patient notification, <i>etc.</i> , and attaching press statement from TN DoH dated 10/9/12.
145195	10/10/12	Bowlin	Atkinson	Attorney-Client Privilege; Work Product	Email from Bowlin (with no text) forwarding (1) Holt response to email from counsel reporting on update from TN DoH regarding status of outbreak investigation, incubation period for fungus, number of confirmed cases, advice for patient notification, <i>etc.</i> , and (2) original email from counsel to which Holt was responding.
145197	10/10/12	Bowlin	Atkinson	Attorney-Client Privilege; Work Product	Email from Bowlin (with no text) forwarding (1) counsel's reply to Holt's response to email from counsel reporting on update from TN DoH regarding status of outbreak investigation, incubation period for fungus, number of confirmed cases, advice for patient notification, <i>etc.</i> , (2) Holt's response, and (3) original email from counsel to which Holt was responding.
140163 140166 140171 141110 141111-12 145199 145202 146180-81 146182-83	10/10/12	GCE	Howell, Trimbach, Woods, Rucker, Jones, Lister, Butler, Day, Bowlin, Batchelor, Polkow, Holt	Attorney-Client Privilege; Work Product	Email from counsel reporting on investigation of NECC's website conducted in anticipation of potential future litigation, and attaching portion of website.

146180 <sup>13</sup> 146206 <sup>14</sup>	10/10/12	Bowlin	Atkinson, Kowarsky, G. Calisher, R. Calisher, K. Calisher, Ivey, Simpson, Pick, Lee, Fox, Lister, Nichols	Attorney- Client Privilege; Work Product; Joint Defense / Common Interest	Email from Bowlin (with no text) forwarding email from counsel reporting on investigation of NECC's website conducted in anticipation of potential future litigation, and attaching portion of website.
140181-82	10/12/12	GCE	Howell, Trimbach, Woods, Rucker, Jones, Lister, Butler, Day, Bowlin, Batchelor, Polkow, Holt	Attorney- Client Privilege; Work Product	Email from counsel reporting on update from TN DoH regarding status of outbreak investigation, incubation period for fungus, number of confirmed cases, advice for patient notification, etc.
140189-90	10/12/12	GCE	Lister, Bowlin, Atkinson	Attorney- Client Privilege; Work Product	Litigation hold email from counsel. This email references internal policies and procedures generally but does not mention the formulary or updating/changing any policies or procedures.
140211 142588	10/15/12	Atkinson	GCE, Bowlin	Attorney- Client Privilege; Work Product	Email from Atkinson to counsel regarding information received from Besse Medical after counsel advised obtaining additional information prior to purchasing.
140211	10/15/12	GCE	Atkinson, Bowlin	Attorney- Client Privilege; Work Product	Email from counsel to Atkinson with follow-up on information Atkinson received from Besse Medical after counsel advised obtaining additional information prior to purchasing.

<sup>13</sup> An unredacted version of this email (with no text) was produced at Bates number 146182.

<sup>14</sup> The portion of the website attached to these emails was produced at Bates number 146208-09.

140235-36 145246-50	10/16/12 10/17/12 <sup>15</sup>	GCE	Howell, Trimbach, Woods, Rucker, Jones, Lister, Butler, Day, Bowlin, Batchelor, Polkow, Holt	Attorney- Client Privilege; Work Product	Email from counsel reporting on update from TN DoH regarding status of outbreak investigation, medical records requests from potential future Plaintiffs, treatment guidance from government agencies, incubation period, sterility testing on NECC's products (potential comparative fault defense), lawsuits filed in MI and NJ related to the outbreak naming clinics.
145246	10/17/12	Bowlin	Atkinson, Kowarsky, G. Calisher, R. Calisher, K. Simpson, Lister, Fox, Lee, Nichols, Pick, Ivey	Attorney- Client Privilege; Work Product; Joint Defense / Common Interest	Email from Bowlin (with no text) forwarding email from counsel reporting on update from TN DoH regarding status of outbreak investigation, medical records requests from potential future Plaintiffs, treatment guidance from government agencies, incubation period, sterility testing on NECC's products (potential comparative fault defense), lawsuits filed in MI and NJ related to the outbreak naming clinics.
140239 140249 140254 140601 141137 141138-39 145253 145266	10/16/12 10/17/12 <sup>16</sup>	GCE	Atkinson, Bowlin	Attorney- Client Privilege; Work Product	Email from counsel requesting update on health status of potential future Plaintiffs, and attaching spreadsheet to be updated.
140239	10/17/12	GCE	Atkinson, Bowlin	Attorney- Client Privilege; Work Product	Follow up from counsel regarding email from counsel requesting update on health status of potential future Plaintiffs.

<sup>15</sup> There are multiple copies of this email in the production. One is dated 10/17/12, and the other is dated 10/16/12. They are identical in substance and senders/recipients. The only difference is the date.

<sup>16</sup> There are multiple copies of this email in the production. One is dated 10/17/12, and the rest are dated 10/16/12. They are identical in substance and senders/recipients. The only difference is the date.

140604 141345 141347-48 1445265	10/17/12	Atkinson	GCE, Bowlin	Attorney-Client Privilege; Work Product	Atkinson's response (with spreadsheet updating counsel on the health status of potential future plaintiffs) to email from counsel requesting update on health status of potential future Plaintiffs.
140603 145265	10/17/12	GCE	Atkinson	Attorney-Client Privilege; Work Product	Email from counsel following up on Atkinson's response to email from counsel requesting update on health status of potential future Plaintiffs.
140603 145264	10/17/12	Atkinson	GCE	Attorney-Client Privilege; Work Product	Atkinson's response to email from counsel following up on Atkinson's response to email from counsel requesting update on health status of potential future Plaintiffs.
140602 145264	10/17/12	GCE	Atkinson	Attorney-Client Privilege; Work Product	Counsel's response to Atkinson's response to email from counsel following up on Atkinson's response to email from counsel requesting update on health status of potential future Plaintiffs.
140601 145262-63	10/18/12	Atkinson	GCE	Attorney-Client Privilege; Work Product	Atkinson's response to counsel's response to Atkinson's response to email from counsel following up on Atkinson's response to email from counsel requesting update on health status of potential future Plaintiffs.
145262	10/18/12	Bowlin	Ivey, Simpson, Lister, Fox, Lee, Nichols, Pick, Kowarsky, K. Calisher, R. Calisher, G. Calisher	Attorney-Client Privilege; Work Product; Joint Defense / Common Interest	Email from Bowlin (with no text) forwarding email exchange between Atkinson and counsel regarding health status of potential future Plaintiffs (Atkinson's response to counsel's response to Atkinson's response to email from counsel following up on Atkinson's response to email from counsel requesting update on health status of potential future Plaintiffs).

140252	10/17/12	GCE	Atkinson	Attorney-Client Privilege; Work Product	Email from counsel requesting information in order to draft response to request for information from Amerigroup.
140251-52	10/17/12	Atkinson	GCE	Attorney-Client Privilege; Work Product	Atkinson's response to email from counsel providing information for draft response to request for information from Amerigroup.
140251 145254	10/17/12	GCE	Atkinson, Bowlin	Attorney-Client Privilege; Work Product	Email from counsel requesting additional information in order to draft response to request for information from Amerigroup.
141353 141354	10/24/12	GCE	Bowlin, Atkinson	Attorney-Client Privilege; Work Product	Email from counsel regarding draft response to request for information from Amerigroup, and attaching draft response.
140346-47	12/11/12	GCE	Howell, Trimbach, Woods, Rucker, Jones, Lister, Lanford, Butler, Day, Bowlin, Batchelor, Polkow, Holt	Attorney-Client Privilege; Work Product	Email from counsel reporting on update from TN DoH regarding status of outbreak investigation, number of confirmed cases, advice for patient notification, emerging trend of local infection, <i>etc.</i>
140393	2/8/13	GCE	Bowlin, Lister, Atkinson, Austin, Strianse	Attorney-Client Privilege; Work Product	Email from counsel regarding consultation with criminal law specialist (Peter Strianse) for response to request for interviews from U.S. Attorney's Office.



140406 145647 145650	2/28/13	Bowlin	Kowarsky, R. Calisher, K. Calisher, G. Calisher	Attorney- Client Privilege; Work Product; Joint Defense/ Common Interest Privilege	Email from Bowlin relaying advice from counsel conveyed to Atkinson and Bowlin regarding restarting injections at NECC.
140426	3/8/13	GCE	Bowlin, Atkinson, Lister	Attorney- Client Privilege; Work Product	Email from counsel regarding television special airing with NECC whistleblower (likely to include information to assist in establishing comparative fault defense as to NECC).
140556-57 141290-91 141292-93 146087-88	10/5/12	GCE	Howell, Trimbach, Woods, Rucker, Jones, Lister, Lanford, Butler, Day, Bowlin, Holt	Attorney- Client Privilege; Work Product	Email from counsel reporting on update from TN DoH regarding status of outbreak investigation, number of confirmed cases, use of NECC products, <i>etc.</i> , and attaching 10/5/12 press release from TN DoH.
140556	10/5/12	Holt	Howell, Trimbach, Woods, Rucker, Jones, Lister, Lanford, Butler, Day, Bowlin, Holt, Polkow, Batchelor	Attorney- Client Privilege; Work Product	Holt response to email from counsel reporting on update from TN DoH regarding status of outbreak investigation, number of confirmed cases, use of NECC products, <i>etc.</i>

146087 146089-90	10/5/12	Bowlin	Atkinson, Kowarsky, G. Calisher, R. Calisher, K. Calisher, Simpson, Lister, Fox, Lee, Nichols, Pick, Ivey	Attorney- Client Privilege; Work Product; Joint Defense / Common Interest	Email from Bowlin (with no text) forwarding email from counsel reporting on update from TN DoH regarding status of outbreak investigation, number of confirmed cases, use of NECC products, <i>etc.</i> , and attaching 10/5/12 press release from TN DoH.
140568-69 141674 141676-77 141678-79 145172-73 150183-84	10/4/12 10/5/12 <sup>17</sup>	GCE	Howell, Trimbach, Woods, Rucker, Jones, Lister, Lanford, Butler, Day, Bowlin	Attorney- Client Privilege; Work Product	Email from counsel enclosing reporting on update from TN DoH regarding status of outbreak investigation, number of confirmed cases, use of NECC products, <i>etc.</i> , and enclosing TN DoH 10/4/12 press release.
140567-68 145170-71	10/6/12	GCE	Howell, Trimbach, Woods, Rucker, Jones, Lister, Lanford, Butler, Day, Bowlin	Attorney- Client Privilege; Work Product	Follow up email from counsel regarding 10/4/12 report from counsel on update from TN DoH, with specific areas of inquiry for follow up to prepare for potential litigation and assist in investigating cause of outbreak.

<sup>17</sup> There are multiple copies of this email in the production. One is dated 10/5/12, and the others are dated 10/4/12. They are identical in substance and senders/recipients. The only difference is the date.

145170 1510183 150185-86 150187-88	10/6/12 10/5/12 <sup>18</sup>	Bowlin	Atkinson, Kowarsky, G. Calisher, R. Calisher, K. Calisher, Simpson, Lister, Fox, Lee, Nichols, Pick, Ivey	Attorney- Client Privilege; Work Product; Joint Defense / Common Interest	Email from Bowlin (with no text) forwarding follow up email from counsel regarding 10/4/12 report from counsel on update from TN DoH, with specific areas of inquiry for follow up to prepare for potential litigation and assist in investigating cause of outbreak.
140574-75 140576	10/6/12	GCE	Howell, Trimbach, Woods, Rucker, Jones, Lister, Lanford, Butler, Day, Bowlin, Holt	Attorney- Client Privilege; Work Product	Email from counsel reporting on update from TN DoH regarding status of outbreak investigation, number of confirmed cases, use of NECC products, <i>etc.</i>
140573	10/7/12	GCE	Howell, Trimbach, Woods, Rucker, Jones, Lister, Lanford, Butler, Day, Bowlin, Holt, Polkow, Batchelor	Attorney- Client Privilege; Work Product	Email from counsel reporting on update from TN DoH regarding status of outbreak investigation, number of confirmed cases, <i>etc.</i>

<sup>18</sup> There are multiple copies of this email in the production. One is dated 10/5/12, and the other is dated 10/6/12. They are identical in substance and senders/recipients. The only difference is the date.

140608	10/18/12	GCE	Howell, Trimbach, Woods, Rucker, Jones, Lister, Lanford, Butler, Day, Bowlin, Batchelor, Polkow, Holt	Attorney- Client Privilege; Work Product	Email from counsel reporting on update from TN DoH regarding status of outbreak investigation, number of confirmed cases, use of NECC products, instructions for patient notification, <i>etc.</i>
140654 140655 145296	10/22/12	GCE	Atkinson, Bowlin, Lister	Attorney- Client Privilege; Work Product	Email from counsel requesting information regarding NECC medications in preparation for potential future litigation. This email does not reference the formulary in any way.
140655 145296	10/22/12	Bowlin	GCE	Attorney- Client Privilege; Work Product	Email from Bowlin responding on behalf of Atkinson (due to failure of Atkinson's computer) to email from counsel requesting information regarding NECC medication in preparation for potential future litigation. This email does not reference the formulary in any way.
140655 145298	10/22/12	GCE	Bowlin	Attorney- Client Privilege; Work Product	Counsel email following up on email from Bowlin responding on behalf of Atkinson (due to failure of Atkinson's computer) to email from counsel requesting information regarding NECC medication in preparation for potential future litigation. This email does not reference the formulary in any way.

145298	10/22/12	Bowlin	GCE	Attorney-Client Privilege; Work Product	Bowlin's response (on behalf of Atkinson) to email from counsel following up on email from Bowlin responding on behalf of Atkinson (due to failure of Atkinson's computer) to email from counsel requesting information regarding NECC medication in preparation for potential future litigation. This email does not reference the formulary in any way. This email does not reference the formulary in any way.
140719	10/29/12	GCE	Atkinson, Bowlin	Attorney-Client Privilege; Work Product	Email from counsel requesting information regarding NECC medications in preparation for potential future litigation. This email does not reference the formulary in any way.
140721 141380 146267	10/30/12	GCE	Atkinson, Bowlin	Attorney-Client Privilege; Work Product	Email from counsel requesting information on the health status of potential future Plaintiffs.
140720	10/30/12	GCE	Bowlin, Atkinson	Attorney-Client Privilege; Work Product;	Follow-up email from counsel requesting information on the health status of potential future Plaintiffs.
140738-39 145341	11/2/12	GCE	Howell, Trimbach, Woods, Rucker, Jones, Lister, Lanford, Butler, Day, Bowlin, Batchelor, Polkow, Holt	Attorney-Client Privilege; Work Product	Email from counsel reporting on government investigation of NECC, Ameridose, and the outbreak, updated case counts, fungus found in medications, suits filed in TN naming NECC, etc.

145341	11/5/12	Bowlin	Atkinson, Ivey, Simpson, Lister, Fox, Lee, Nichols, Pick, Kowarsky, G. Calisher, R. Calisher, K. Calisher	Attorney-Client Privilege; Work Product; Joint Defense / Common Interest	Bowlin email (with no text) forwarding email from counsel reporting on government investigation of NECC, Ameridose, and the outbreak, updated case counts, fungus found in medications, suits filed in TN naming NECC, etc.
146396-97 141382	11/2/12	GCE	Howell, Trimbach, Woods, Rucker, Lanford, Polkow, Batchelor, Bowlin, Holt	Attorney-Client Privilege; Work Product	Email from counsel regarding update on medical records requests and suits filed against NECC by potential future Plaintiffs (attaching spreadsheet created by counsel).
146396	11/5/12	Bowlin	Atkinson, Ivey, Simpson, Lister, Fox, Lee, Nichols, Pick, Kowarsky, G. Calisher, R. Calisher, K. Calisher	Attorney-Client Privilege; Work Product; Joint Defense / Common Interest	Bowlin email (with no text) forwarding email from counsel regarding update on medical records requests and suits filed against NECC by potential future Plaintiffs (attaching spreadsheet created by counsel).

140740 145344	11/2/12	GCE	Howell, Trimbach, Woods, Rucker, Lanford, Polkow, Batchelor, Bowlin, Holt	Attorney- Client Privilege; Work Product	Follow-up email from counsel regarding update on medical records requests and suits filed against NECC by potential future Plaintiffs.
145344	11/5/12	Bowlin	Atkinson, Ivey, Simpson, Lister, Fox, Lee, Nichols, Pick, Kowarsky, G. Calisher, R. Calisher, K. Calisher	Attorney- Client Privilege; Work Product; Joint Defense / Common Interest	Bowlin email (with no text) forwarding follow-up email from counsel regarding update on medical records requests and suits filed against NECC by potential future Plaintiffs.
140893 145532-33	1/12/13	GCE	Butler, Lanford, Polkow, Batchelor, Holt, Lister, Jones, Bowlin, Howell, Trimbach, Rucker, Woods	Attorney- Client Privilege; Work Product	Email from counsel with report on potential theories of liability in potential future litigation and update on status of litigation against clinics outside TN.
145532	1/14/13	Bowlin	Atkinson	Attorney- Client Privilege; Work Product	Email from Bowlin (with no text) forwarding email from counsel with report on potential theories of liability in potential future litigation and update on status of litigation against clinics outside TN.

140903 145560-61	1/28/13	GCE	Lister, Bowlin, Jones, Schamberg, Butler, Lanford, Batchelor, Polkow, Culclasure, Holt	Attorney- Client Privilege; Work Product	Email from counsel with report on update from CDC on status of investigation of outbreak (updated case counts).
145560	1/29/13	Bowlin	G. Calisher	Attorney- Client Privilege; Work Product; Joint Defense / Common Interest	Email from Bowlin (with no text) forwarding email from counsel with report on update from CDC on status of investigation of outbreak (updated case counts).
140916-17 140939-41 140943-44	3/13/13	GCE	Culclasure, Atkinson, Lister, Lanford, Strianse	Attorney- Client Privilege; Work Product	Email from counsel forwarding request from U.S. Attorney's Office for grand jury testimony and outlining plan of action for responding to request.
140916	3/15/13	Atkinson	Bowlin, G. Calisher	Attorney- Client Privilege; Work Product; Joint Defense / Common Interest	Email from Atkinson forwarding to Bowlin and G. Calisher email from counsel forwarding request from U.S. Attorney's Office for grand jury testimony and outlining plan of action for responding to request.
140938-39 140942-43	3/21/13	GCE	Culclasure, Atkinson, Lister, Strianse	Attorney- Client Privilege; Work Product	Email from counsel with status update on request from U.S. Attorney's Office for grand jury testimony and outlining further plan of action.



140938	3/22/13	Atkinson	Bowlin, G. Calisher	Attorney-Client Privilege; Work Product; Joint Defense / Common Interest Privilege	Email from Atkinson forwarding to Bowlin and G. Calisher email from counsel with status update on request from U.S. Attorney's Office for grand jury testimony and outlining further plan of action.
140929	3/20/13	GCE	Atkinson, Bowlin	Attorney-Client Privilege; Work Product	Email from counsel regarding site visit to interview employees and gather information for potential future litigation.
140988 145772-73	4/1/13	GCE	Bowlin, Atkinson	Attorney-Client Privilege; Work Product	Email from counsel regarding information to be gathered during site visit to prepare for potential future litigation. This email references internal policies and procedures generally but does not mention the formulary or updating/changing any policies or procedures.
145772	4/1/13	Bowlin	Kowarsky, G. Calisher, K. Calisher, R. Calisher	Attorney-Client Privilege; Work Product; Joint Defense / Common Interest	Email from Bowlin (with no text) forwarding email from counsel regarding information to be gathered during site visit to prepare for potential future litigation. This email references internal policies and procedures generally but does not mention the formulary or updating/changing any policies or procedures.

140959-60 145721-23	3/26/13	GCE	Lanford, Butler, Rudolph, Polkow, Lister, Jones, Howell, Rucker, Trimbach, Woods, Holt	Attorney- Client Privilege; Work Product	Email from counsel with report on update from CDC on status of investigation of outbreak (updated case counts).
145721	3/26/13	Bowlin	Atkinson, Kowarsky, K. Calisher, G. Calisher, R. Calisher	Attorney- Client Privilege; Work Product; Joint Defense / Common Interest	Email from Bowlin (with no text) forwarding email from counsel with report on update from CDC on status of investigation of outbreak (updated case counts).
140985 140987	3/29/13	GCE	Atkinson, Bowlin, G. Calisher	Attorney- Client Privilege; Work Product; Joint Defense / Common Interest	Email from counsel requesting information on SSC's medication purchasing practices to prepare for potential future litigation. This email does not reference the formulary in any way.
140984-85	3/29/13	Atkinson	GCE	Attorney- Client Privilege; Work Product	Atkinson's response to email from counsel requesting information on SSC's medication purchasing practices to prepare for potential future litigation. This email does not reference the formulary in any way.

140985	3/29/13	GCE	Atkinson, Bowlin, G. Calisher	Attorney- Client Privilege; Work Product; Joint Defense / Common Interest	Counsel's follow up to Atkinson's response to email from counsel requesting information on SSC's medication purchasing practices to prepare for potential future litigation. This email does not reference the formulary in any way.
141356 141357-65	10/24/12	GCE	Howell, Rucker, Woods, Lanford, Butler, Bowlin	Attorney- Client Privilege; Work Product	Email from counsel with update on Mass. BoP's investigation of NECC and attaching analysis of Mass. BoP Preliminary Investigation Report.
141403-08 141409-35	12/22/12	GCE	Howell, Trimbach, Woods, Rucker, Jones, Lister, Lanford, Butler, Day, Bowlin, Batchelor, Polkow, Holt	Attorney- Client Privilege; Work Product	Email from counsel reporting on NECC's bankruptcy petition, analyzing petition and impact on potential future lawsuits, and attaching copy of petition.
141509-11 141512-15 146976-78	1/25/13	GCE	Jones, Lister, Bowlin	Attorney- Client Privilege; Work Product	Email from counsel reporting on new developments in litigation involving NECC (NECC criminal investigation, NECC bankruptcy, and consolidation of cases in the NECC MDL) and attaching analysis of NECC bankruptcy schedules.

146976 146979-82	1/29/13	Bowlin	G. Calisher	Attorney-Client Privilege; Work Product; Joint Defense / Common Interest	Email from Bowlin (with no text) forwarding email from counsel reporting on new developments in litigation involving NECC (NECC criminal investigation, NECC bankruptcy, and consolidation of cases in the NECC MDL) and attaching analysis of NECC bankruptcy schedules.
141709-10 141711-12 141713-19 153826-28	10/17/12	GCE	Howell, Trimbach, Woods, Rucker, Jones, Lister, Lanford, Butler, Day, Bowlin, Batchelor, Polkow, Holt	Attorney-Client Privilege; Work Product	Email from counsel attaching report on update from TN DoH regarding status of outbreak investigation, number of confirmed cases, <i>etc.</i> , attaching complaint filed against NECC in TN, and reporting on lawsuits filed against NECC in MI and VA.
153826 153829-30 153831-37	10/18/12	Bowlin	Ivey, Simpson, Lister, Fox, Lee, Nichols, Pick, Kowarsky, G. Calisher, R. Calisher, K. Calisher	Attorney-Client Privilege; Work Product; Joint Defense / Common Interest	Email from Bowlin (with no text) forwarding email from counsel attaching report on update from TN DoH regarding status of outbreak investigation, number of confirmed cases, <i>etc.</i> , attaching complaint filed against NECC in TN, and reporting on lawsuits filed against NECC in MI and VA.

141781-84 141785-807 141808-29 141830-31 186759-62	10/13/12	GCE	Howell, Trimbach, Woods, Rucker, Jones, Lister, Lanford, Butler, Day, Bowlin, Batchelor, Polkow, Holt	Attorney- Client Privilege; Work Product	Email from counsel attaching report on update from TN DoH regarding status of outbreak investigation, number of confirmed cases, <i>etc.</i> , reporting on retention of consulting experts to prepare for potential future litigation (and attaching CVs), reporting on TN BoP proceedings related to NECC and Barry Cadden, including recommendations for patient notification, <i>etc.</i>
186759 186763-85 186786-807 186808-09	10/13/12	Bowlin	Ivey, Simpson, Lister, Fox, Lee, Nichols, Pick, Kowarsky, G. Calisher, R. Calisher, K. Calisher, Atkinson	Attorney- Client Privilege; Work Product; Joint Defense / Common Interest	Email from Bowlin (with no text) forwarding email from counsel attaching report on update from TN DoH regarding status of outbreak investigation, number of confirmed cases, <i>etc.</i> , reporting on retention of consulting experts to prepare for potential future litigation (and attaching CVs), reporting on TN BoP proceedings related to NECC and Barry Cadden, including recommendations for patient notification, <i>etc.</i>
142094-95 152096-97 142098-104 142105-11 186810-12	10/22/12 10/21/12 <sup>19</sup>	GCE	Howell, Trimbach, Woods, Rucker, Jones, Lister, Lanford, Butler, Day, Bowlin, Batchelor, Polkow, Holt	Attorney- Client Privilege; Work Product	Email from counsel attaching report on update from TN DoH regarding status of outbreak investigation, number of confirmed cases, <i>etc.</i> , and reporting on additional suits filed against NECC in TN and attaching the complaints.

<sup>19</sup> There are multiple copies of this email in the production. One is dated 10/22/12, and the other is dated 10/21/12. They are identical in substance and senders/recipients. The only difference is the date.

186810 186813-14 186815-21 186822-28	10/22/12	Bowlin	Ivey, Simpson, Lister, Fox, Lee, Nichols, Pick, Kowarsky, G. Calisher, R. Calisher, K. Calisher, Atkinson	Attorney- Client Privilege; Work Product; Joint Defense / Common Interest	Email from Bowlin forwarding email from counsel attaching report on update from TN DoH regarding status of outbreak investigation, number of confirmed cases, <i>etc.</i> , and reporting on additional suits filed against NECC in TN and attaching the complaints.
142112-14 142115-23 142124-26 142127-29 186833-36	10/25/12	GCE	Howell, Trimbach, Woods, Rucker, Jones, Lister, Lanford, Butler, Day, Bowlin, Batchelor, Polkow, Holt	Attorney- Client Privilege; Work Product	Email from counsel attaching report on update from TN DoH regarding status of outbreak investigation, number of confirmed cases, public reprimand of NECC, <i>etc.</i> (and attaching TN DoH 10/24/12 press release and Mass. BoP's preliminary investigation report), reporting on additional suits filed against NECC in TN and attaching the complaints, and providing advice on patient notification.
186833 186840-48 18649-51 186852-54	10/25/12	Bowlin	Ivey, Simpson, Lister, Fox, Lee, Nichols, Pick, Kowarsky, G. Calisher, R. Calisher, K. Calisher, Atkinson	Attorney- Client Privilege; Work Product; Joint Defense / Common Interest	Email from Bowlin (with no text) forwarding email from counsel attaching report on update from TN DoH regarding status of outbreak investigation, number of confirmed cases, public reprimand of NECC, <i>etc.</i> (and attaching TN DoH 10/24/12 press release and Mass. BoP's preliminary investigation report), reporting on additional suits filed against NECC in TN and attaching the complaints, and providing advice on patient notification.

142598-601 142602-03 142604-07 142608-14 142615-17 142618-20 142621-28 142629-33 190933-36	10/15/12	GCE	Howell, Trimbach, Woods, Rucker, Jones, Lister, Lanford, Butler, Day, Bowlins, Batchelor, Polkow, Holt	Attorney- Client Privilege; Work Product	Email from counsel attaching report on TN BoP proceedings related to NECC and Barry Cadden, attaching report summarizing call with consulting expert, attaching articles furnished by consulting expert, attaching complaint filed in TN against NECC, and reporting on these activities, plan of action for responding to grand jury subpoenas from NECC federal prosecution, updates on government investigation of outbreak, <i>etc.</i>
190933 190937-98 190939-42 190943-49 190950-52 190953-55 190956-63 190964-68	10/15/12	Bowlins	Ivey, Simpson, Lister, Fox, Lee, Nichols, Pick, Kowarsky, G. Calisher, R. Calisher, K. Calisher, Atkinson	Attorney- Client Privilege; Work Product; Joint Defense / Common Interest	Email from Bowlins (with no text) forwarding email from counsel attaching report on TN BoP proceedings related to NECC and Barry Cadden, attaching report summarizing call with consulting expert, attaching articles furnished by consulting expert, attaching complaint filed in TN against NECC, and reporting on these activities, plan of action for responding to grand jury subpoenas from NECC federal prosecution, updates on government investigation of outbreak, <i>etc.</i>
145204-05	10/11/12	GCE	Howell, Trimbach, Woods, Rucker, Jones, Lister, Lanford, Butler, Day, Bowlins, Batchelor, Polkow, Holt	Attorney- Client Privilege; Work Product	Email from counsel reporting on updated guidance from TN DoH and CDC regarding patient notification, case counts, <i>etc.</i>

145204	10/12/12	Bowlin	Ivey, Simpson, Lister, Fox, Lee, Nichols, Pick	Attorney- Client Privilege; Work Product	Email from Bowlin (with no text) forwarding email from counsel reporting on updated guidance from TN DoH and CDC regarding patient notification, case counts, <i>etc.</i>
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Respectfully submitted,

**GIDEON, COOPER & ESSARY, PLC**

/s/ Matthew H. Cline

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Defendants***

\* Admitted pursuant to MDL Order No. 1.

\*\* Admitted *pro hac vice*.

**CERTIFICATE OF SERVICE**

I hereby certify that on the 8<sup>th</sup> day of January, 2017, a true and accurate copy of the foregoing was served on the following by electronic mail.

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/s/ Matthew H. Cline

**Matthew H. Cline**